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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 232 64227

Office: DALLAS

Date: OCT 19 2009

IN RE: Applicant:

APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Dallas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. On appeal, counsel asserts that the director failed to consider and to properly weigh the evidence submitted by the applicant. Counsel submits new and copies of previously submitted evidence for consideration.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status since before January 1, 1982 and during the requisite period. The applicant submitted affidavits, a letter of employment, and tax documents in the name of [REDACTED] as evidence to support his Form I-485 application. The affidavits stating that the affiant first met and knew the applicant after the required period, or that do not refer to dates occurring within the requisite period, will not be considered.

The affidavits from [REDACTED] and [REDACTED] all contain statements that the affiants have known the applicant for part of or all of the requisite period. Some of these affiants attest to the applicant being physically present in the United States during the required period; others mention knowing the applicant during the requisite period but do not indicate that he continuously resided in the United States. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the referenced witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The AAO notes inconsistencies in the evidence submitted in support of the applicant's continuous residence in and absences from the United States during the requisite period. The affidavit of [REDACTED] states that she first met the applicant in 1987 when he was living with his sister in Dallas. The information on the Form I-687, reaffirmed by the applicant on appeal, indicates that he lived in California until 1990 - 1991, when he moved to Texas to live with his sister. The affidavit of [REDACTED], the applicant's sister, states that she and her brother lived together in South Gate, California, from 1981-1984. The Form I-687, however, indicates that the applicant resided in Sun Valley, California, from 1981-1989. The affidavit of [REDACTED] also states that the

applicant resided in Sun Valley, California, in 1984. The Form G-325A submitted by the applicant in connection with his LIFE Act application indicates that he was married in Mexico in August, 1986. The applicant failed to list this absence on his Form I-687 application. While the evidence submitted with the LIFE application mentions the August 1986 trip to Mexico to get married, the applicant did not provide any explanation for his earlier failure to list this absence.

In a sworn statement to the immigration officer in 1998 when the applicant was stopped at the border attempting entry under the name of [REDACTED] the applicant stated that he previously lived illegally in the United States for approximately one year in 1995, in Los Angeles.

The inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence of record does not establish the applicant's employment during the requisite period. The applicant submitted a letter of employment from Onnik Shoe Company indicating that he was employed by the company from 1984 – 1990 as a sticher. Subsequently, in response to the director's concern that the Form I-687 indicated that the applicant was employed by Sergio Shoe Company from 1984 - 1990, the applicant submitted a second letter from [REDACTED], indicating that Sergio Shoe Company changed its name to Onnik Shoe Company in 1992. Neither of the letters complies with the regulation at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the letters from Onnik Shoe Company do not contain the required information, they will be given nominal weight.

The applicant also submitted the 1985 Form 1040A and W-2 Wage and Tax Statement of [REDACTED] indicating 1985 income of \$5,720.55 from Sergio Shoe Company. The address of [REDACTED] is not the same as the applicant's address listed in Sun Valley, California in 1986 on the Form I-687. The social security number of [REDACTED] ***** [REDACTED] is not the same social security number the applicant claimed to have when he was interviewed on his LIFE Act application on March 17, 2003, ***** [REDACTED]. The record contains a copy of a purchase agreement for the purchase of a vehicle in 2003 by the applicant, when he uses the same social security number as that of [REDACTED]. This evidence does not establish, however, that [REDACTED] is the same person as the applicant. *See*, 8 C.F.R. § 245a.4(b)(4)(iii). As such, the 1985 tax return and

W-2 evidencing the employment of [REDACTED] by Sergio Shoe Company will not be considered.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through December 31, 1987.

The record additionally reflects that the applicant was removed from the United States in 1998 after seeking admission by misrepresenting himself as another person, and sought admission to the United States within 5 years of the date of his departure. Accordingly, the applicant is inadmissible under sections 212(a)(9)(A)(i) and 212(a)(6)(C)(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(A)(i) and 1182(a)(6)(C)(i), and ineligible for temporary resident status under section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). While these grounds of inadmissibility may be waived under section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), the applicant has not applied for nor received a waiver.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through December 31, 197, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.